



Paper 16

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JUL 19 2007

OFFICE OF PETITIONS

In re Application of :
Akira Horiguchi et al. :
Application No. 09/743,502 : **DECISION GRANTING PETITION**
Filed: June 7, 2001 :
Attorney Docket No: 474082001100 :

This is a decision on the petition filed December 12, 2006 under 37 CFR 1.137(a) and in the alternative as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition under 37 CFR 1.137(a) is **DISMISSED** as involving moot issues.
The petition under 37 CFR 1.181 is **GRANTED**.

For failure to timely respond to a non-Final Office Action mailed May 7, 2003, this application became abandoned on August 4, 2003. Accordingly, a Notice of Abandonment was mailed December 3, 2003.

The file record discloses that the non-Final Office Action was mailed to the address of record. However, petitioner contends that it was not received. In support of this contention, petitioner has not proffered any substantive evidence of non-receipt but a review of the file discloses that the office action was mailed to an incorrect address. It appears that on March 4, 2003 a Notice of Acceptance of Power of Attorney and Notice Regarding Change of Power of Attorney were both mailed in response to a Revocation and Power of Attorney purportedly filed February 19, 2003 and thus the address of record was changed by the USPTO.

Petitioner argues that they never filed a revocation or power of attorney in this matter. In accordance with Petitioner's arguments, there does not appear to be a Revocation and/or Power of Attorney dated February 19, 2003 in the file. Thus the changes made by the USPTO were in error and it would therefore stand to reason that even without additional proof submitted by the petitioner, that the office communication could not have been received by petitioner and thus, petitioner could not timely reply to the communication.

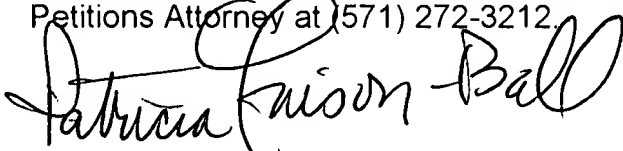
In view of the above, it is concluded that the non-Final Office Action was never received. Accordingly, the holding of abandonment is withdrawn. Since no petition fee

received. Accordingly, the holding of abandonment is withdrawn. Since no petition fee is due under 37 CFR 1.181, none has been charged.

With respect to the petition under 37 CFR 1.137(a), in view of the above, there is no need to treat the petition under the unavoidable standard and thus the petition fee in the amount of \$500 has been credited back to deposit account 03-1952.

This matter is being referred to Technology Center 3723 for a re-mailing of the non-Final Office Action previously mailed May 7, 2003.

Telephone inquiries related to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison-Ball". The signature is written in a cursive, flowing style. The first name "Patricia" is written in a larger, more prominent script, followed by "Faison-Ball" in a slightly smaller, more compact script. The signature is positioned over the typed name and title of the undersigned.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions